

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GEORGE CAVELLE,

Plaintiff,

vs.

CHICAGO TRANSIT AUTHORITY, DORVAL
R. CARTER, JR., individually, JOHN
DOE 1, and JOHN DOE 2,

Defendants.

No. 17 C 5409

Chicago, Illinois

March 7, 2019
11:05 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HON. MARY R. ROWLAND, MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: MR. ROBERT D. SWEENEY
MR. JOHN J. SCHARKEY
Sweeney & Scharkey LLC,
111 West Washington Street, Suite 1160,
Chicago, Illinois 60602

For the Defendants: MR. JOHN F. KENNEDY
MS. ELIZABETH E. BABBITT
Taft, Stettinius & Hollister LLP,
111 East Wacker Drive, Suite 2800,
Chicago, Illinois 60601

ALSO PRESENT: MS. KAREN G. SEIMETZ

PATRICK J. MULLEN
Official Court Reporter
United States District Court
219 South Dearborn Street, Room 1412
Chicago, Illinois 60604
(312) 435-5565

1 THE CLERK: 17 C 5409, Cavelle versus Chicago Transit
2 Authority.

3 THE COURT: Good morning.

4 MR. KENNEDY: Good morning, Your Honor.

03:48:45

5 MS. BABBITT: Good morning, Your Honor.

6 THE COURT: Okay. Good morning.

7 MR. KENNEDY: Judge, for the record, John Kennedy for
8 the CTA and for president Dorval Carter.

03:49:28

9 MS. BABBITT: Elizabeth Babbitt on behalf of the CTA
10 and president Dorval Carter, Your Honor.

11 MR. SCHARKEY: Good morning, Your Honor. John
12 Scharkey, S-c-h-a-r-k-e-y, on behalf of George Cavelle.

13 MR. SWEENEY: Robert Sweeney on behalf of Mr. Cavelle,
14 S-w-e-e-n-e-y.

03:50:04

15 MR. KENNEDY: Judge, I should also note for the record
16 that the general counsel for the CTA is present in court --

17 THE COURT: Good morning.

18 MR. KENNEDY: -- Karen Seimetz, given the nature of
19 some of the subject matter we'll address today.

03:50:23

20 THE COURT: Good morning.

21 MS. SEIMETZ: Good morning.

22 THE COURT: Okay. So if we could deal with kind of
23 more of what I would call the more mundane discovery disputes
24 you have, so I read the complaint and I understand plaintiff
25 was terminated after a long career with the CTA. Could you

03:50:41

1 tell me some of the defendants' defenses? I don't understand
2 the questions about nepotism, sexual relations, website. So,
3 you know, they're asking questions about him, you're refusing
4 to give answers, and then you're asking questions back. So
03:51:44 5 this stuff is either relevant or it isn't relevant. What's
6 good for the goose is good for the gander. So I'm either going
7 to order the stuff produced by both sides or I'm going to keep
8 it all out by both sides. Either way, I don't care.

9 What's happening in terms of that in the case?

03:52:12 10 MS. BABBITT: Sure, Your Honor. So to step back,
11 first the defendants filed a motion to compel last week on some
12 of the discovery. We have met and conferred.

13 THE COURT: Right.

14 MS. BABBITT: The topics of those are essentially the
03:52:30 15 financial records and tax returns of the plaintiff. Those, we
16 would argue, are relevant to the case because one of the
17 contested issues in this case is the issue of Mr. Cavelle and
18 money that was with the CTA. When Mr. Cavelle resigned from
19 the CTA, a fund of money called the CTA holiday train fund went
03:53:26 20 missing. The CTA --

21 THE COURT: And how much money are we talking about --

22 MS. BABBITT: About \$6,000.

23 THE COURT: -- in the train fund?

24 MS. BABBITT: So that fund of money went missing.

03:53:50 25 Later on, the CTA determined that Mr. Cavelle had closed the

1 CTA holiday train fund account and --

2 THE COURT: Is that a bank account, or is that a --

3 MS. BABBITT: That's a bank account, yes.

4 THE COURT: Okay. So it's not something that's just
03:54:18 5 kept as petty cash.

6 MS. BABBITT: No.

7 THE COURT: Okay.

8 MS. BABBITT: It was in a checking account.

9 THE COURT: Okay.

03:54:28 10 MS. BABBITT: He closed it. Then after he resigned
11 from the CTA, the CTA determined that no one at the CTA had
12 access to that money anymore. They went back to Mr. Cavelle,
13 and Mr. Cavelle returned the money. So one of the contested
14 issues in this case is whether or not Mr. Cavelle improperly
03:54:53 15 took, stole, what have you, the money before returning it when
16 he was in my words caught to have taken it.

17 THE COURT: Right.

18 MS. BABBITT: So that's why we're interested in
19 particular in the bank records. In some of the financial
03:55:13 20 transactions that we issued in the interrogatories, there's
21 significant sums of money in the, you know, thousands of
22 dollars, 2800, 2300, cash deposits or withdrawals that we're
23 inquiring about. We think that's relevant to show in the case
24 what he did with that money in that period of time.

03:55:38 25 THE COURT: How long of a period of time are we

1 talking about?

03:55:52

2 MS. BABBITT: We had asked for the records for 2015 in
3 part because we wanted to also demonstrate that if
4 Mr. Cavelle -- you know, it appeared in some of the accounts
5 that we do have records for that he was running a deficit. In
6 other words, he didn't have a lot of money and had a reason or
7 a motive to take and close the holiday train fund account. So
8 2015 is the year that we're asking for the records for.

9 THE COURT: Okay.

03:56:12

10 MS. BABBITT: And to earmark that a little bit for
11 you, the money in the holiday train fund account was closed by
12 Mr. Cavelle in June, I think June 17th, 2015. The money was
13 returned in early September of 2015.

14 THE COURT: Okay.

03:56:36

15 MS. BABBITT: Then with respect to -- I think you
16 mentioned the nepotism and some of the other policies that were
17 the subject of plaintiff's motion to compel. We actually did
18 produce those policies. We filed a response just shortly this
19 morning.

03:56:54

20 THE COURT: I didn't see it. Okay.

21 MS. BABBITT: But the subject of it is essentially
22 that we already produced those. So we gave the Bates ranges
23 for those documents that have already been produced.

24 THE COURT: And that's nepotism and what?

03:57:20

25 MS. BABBITT: Nepotism, fraternization with employees,

1 secondary employment, and policies relating to employee's
2 online presence. Those were produced months ago, I think in
3 December, Your Honor.

4 THE COURT: Okay.

03:57:45

5 MS. BABBITT: But one of the issues --

6 THE COURT: So do you understand that the policies
7 have been produced?

8 MR. SWEENEY: So they produced 135,000 documents.

03:58:18

9 THE COURT: Okay. So they've now identified the Bates
10 for those.

11 MR. SWEENEY: We hadn't seen it. We asked for it
12 previously. Apparently they filed a response today that we
13 didn't see.

14 THE COURT: So in the response are the Bates ranges?

03:58:30

15 MS. BABBITT: Yes, that's right, Your Honor. Then
16 there's a separate issue that's related to at least the
17 fraternization policy that you raised, Your Honor, and this is
18 with respect to Mr. Cavelle's interactions with female
19 employees, specifically any sexually inappropriate relations
20 that he had with those employees.

03:58:59

21 THE COURT: Okay. So let's stop for a moment.

22 MS. BABBITT: Sure.

23 THE COURT: So as to plaintiff's motion to compel --
24 well, first of all, let me deal with the money stuff because
25 you've got a lot going here. I'm not going to order the

03:59:16

1 production of tax records over a \$6,000 fund. I'm just a
2 little sensitive about tax records. I think they have a lot of
3 personal information in them. The IRS very much wants to keep
4 them confidential. I'm not ordering tax records over a \$6,000
5 issue.

03:59:50

6 MS. BABBITT: Can I just put another note on that,
7 Your Honor?

8 THE COURT: Yes.

9 MS. BABBITT: I understand that is a big request and
10 sensitive, and we're sensitive to that as well. One of the
11 reasons, in addition to the funds issue that I raised with
12 respect to the tax return -- and this is a significant
13 contested fact in the case -- Mr. Cavelle asserts that he would
14 have received and did receive an offer of employment for a job
15 in Seattle and that he was, you know, going to make a certain
16 amount of money in Seattle. So the amount of money that he was
17 making in the intervening years that he actually made as
18 opposed to working in Seattle, I think, is relevant and would
19 be something that would go to damages in this case.

04:00:13

04:00:35

20 THE COURT: Well, has he otherwise mitigated? Well, I
21 guess you don't -- you don't have a Title VII or a 1983, so you
22 have a defamation and a tortious interference.

04:01:03

23 MR. SWEENEY: Correct.

24 THE COURT: Do you have to mitigate under tortious
25 interference, I assume?

04:01:25

1 MR. SWEENEY: We do.

2 THE COURT: Okay. So have you provided information on
3 mitigation.

04:01:34

4 MR. SWEENEY: He sat for a deposition for six hours
5 already where they asked him --

6 THE COURT: Have you provided any documentation about
7 tortious -- about mitigation?

8 MR. SWEENEY: Actually, we will produce tax returns or
9 at least --

04:02:20

10 THE COURT: From 2014 to the present?

11 MR. SWEENEY: No. What we think is relevant is the
12 issue that she just raised, which is what his mitigation might
13 be going forward after CTA.

14 THE COURT: Okay.

04:02:32

15 MR. SWEENEY: So we think that probably is relevant.

16 THE COURT: Okay. So he was fired in 2015?

17 MR. SWEENEY: He was --

18 THE COURT: The end of 2015.

04:03:00

19 MS. BABBITT: He resigned in lieu of termination in
20 August of 2015.

21 THE COURT: Right.

22 MR. SWEENEY: For the record, he was appointed in May
23 of 2015 and let go on August 28th of 2015.

24 MS. BABBITT: He was a CTA employee for 22 years.

04:03:11

25 MR. SWEENEY: But in terms of the position that is

1 relevant to this case, he held it for about four or five
2 months.

3 THE COURT: Okay. Okay. So he resigns in 2015. So
4 you're going to produce tax records for 2016, 2017, and 2018?

04:03:37

5 MR. SWEENEY: We will do, as I've advised counsel,
6 what we have. His ex-wife has all the tax returns. He doesn't
7 have them. So we can provide a release to them for the
8 relevant returns, and then we can provide the tax return for
9 last year which he has.

04:04:14

10 THE COURT: So that's -- when you say "last year," you
11 mean 2018 or you mean 2017?

12 MR. SWEENEY: '18.

13 THE COURT: So that's been filed?

14 MR. SWEENEY: Yes.

04:04:23

15 THE COURT: Okay. So you're going to provide 2018 and
16 you're going to provide a release that they can file with the
17 IRS -- so that takes a while -- for 2015, 2016, and 2017.

18 MR. SWEENEY: Correct.

19 THE COURT: Okay.

04:04:41

20 MR. SWEENEY: Well --

21 THE COURT: You should have talked before you came. I
22 wouldn't have read that.

23 MR. SWEENEY: -- not 2015.

24 THE COURT: So you don't agree that 2015 is relevant
25 because that's the year he resigned.

04:05:02

1 MR. SWEENEY: Right.

2 THE COURT: Okay.

3 MS. BABBITT: Well, Your Honor --

4 THE COURT: I'll agree with that. Okay.

04:05:13 5 Now, the other things that you're looking for -- and
6 these are in your document requests -- are checking and savings
7 accounts, credit card accounts, certificates of deposit,
8 401(k)'s, IRA's. I mean, this is too much for a \$6,000 theft.
9 It's too much. So I understand your concern. I'm happy to
04:05:37 10 give you some documents, but not his 401(k)'s. I mean, do you
11 think he made a \$6,000 deposit into his 401(k) with the \$6,000
12 train fund?

13 MR. SWEENEY: And I will also point out they
14 subpoenaed all of these records already from every bank that
04:06:11 15 Mr. Cavelle -- that they knew about that we disclosed.

16 THE COURT: Okay. So do you have these records from
17 subpoenas?

18 MR. SWEENEY: So that's part of the issue.

19 MS. BABBITT: No, Your Honor. We have some of the
04:06:24 20 records. One of the -- when we did meet and confer, we
21 narrowed it to identify what accounts he actually had, and we
22 asked them to confirm which accounts he had and if they were
23 still open in 2015 or if they were not. We just wanted to know
24 that.

04:06:43 25 We also, you know, wanted the records that were in

04:07:08

1 some of these accounts because one of the defenses on the theft
2 issue in our view is that we don't know where he got the money
3 to pay the money back. The plaintiff would say that he kept
4 the \$6,000 safely in a drawer until he got a phone call from
5 the CTA that said: Oh, you still have the money?

04:07:28

6 We would say that, in fact, he didn't have the money,
7 and his bank records would show that he didn't have the money
8 and he had to come up with it somewhere. So that's why we were
9 interested in getting that. I concede the 401(k), we don't
10 need to get into that, but I do think that some of these bank
11 records, debit cards, and checking records are relevant unless
12 he made a withdrawal from a 401(k) to get that money. I don't
13 know that, obviously.

04:07:48

14 THE COURT: So have you worked this out or not, and do
15 you have these records from subpoenas?

16 MR. SWEENEY: So they also subpoenaed his son's bank
17 records.

18 THE COURT: Right. But do you have the subpoenaed
19 returns?

04:07:58

20 MS. BABBITT: I have his Chase Bank records.

21 MR. SWEENEY: Which is all he has.

22 MS. BABBITT: So we need a confirmation that that's
23 the only account he has. If that's what they're representing,
24 we'd just like to get that in writing and confirm that that's
25 what it is.

04:08:48

1 THE COURT: And Chase, whatever that is, a savings
2 account, a checking account --

3 MS. BABBITT: Yes.

04:08:58

4 THE COURT: -- a 401(k), whatever Chase has, you have
5 all of that.

6 MS. BABBITT: We have the Chase checking, yes.

7 THE COURT: That's all they have is the Chase
8 checking.

04:09:08

9 MR. SWEENEY: They have the banking institutions where
10 Mr. Cavelle banked.

11 THE COURT: Okay. You're talking past each other. Is
12 Chase the only place where he has any accounts?

13 MR. SWEENEY: I will confirm that, but my -- yes, I
14 believe that is accurate.

04:09:23

15 THE COURT: So if there's no 401(k) at Chase, he
16 doesn't have a 401(k)?

17 MR. SWEENEY: Well, I think he worked at CTA. I don't
18 know if CTA has a 401(k), but he was there since he's been 21.

04:09:45

19 THE COURT: Okay. But you have your own -- do you
20 have your own information if there's some CTA 401(k) account?

21 MS. BABBITT: I think it's a pension account.

22 THE COURT: So you'd have to get that from the pension
23 board or something.

04:10:01

24 MS. BABBITT: Yeah. Unless if Mr. Sweeney is going to
25 confirm with his client as to what bank accounts Mr. Cavelle

1 had as sources of money, that would be helpful. You know,
2 we've been trying to narrow that without having the Court deal
3 with it.

4 THE COURT: Okay. Okay. So here's what I would say.
04:10:19 5 I still don't think that -- I don't mean to make light of a
6 \$6,000 account, and I don't know if this was a charitable
7 account or what this was. It sounds like it was maybe kind of
8 a holiday kind of thing, but I'm reluctant to get involved in,
9 you know, someone's retirement account because of a \$6,000
04:10:58 10 theft which got repaid. You know, I want to keep this
11 proportional to what's going on here.

12 But I'm not -- I don't understand if they have
13 everything already from a subpoena or not. I don't feel like
14 you guys are communicating on one plain. Okay? So have you
04:11:28 15 produced what you got from the subpoena?

16 MS. BABBITT: Yes.

17 THE COURT: Okay. So I want you to confirm with your
18 client. Did you get one year's worth from your subpoena?

19 MS. BABBITT: I believe so.

04:11:37 20 THE COURT: Your request says January 2014 to December
21 2015. So your request is for two years, but maybe you've
22 narrowed that down to just 2015.

23 MS. BABBITT: Yes.

24 THE COURT: Okay. So I want you to confirm with the
04:12:03 25 plaintiff that that's the only account he had during 2015, one

1 checking account. So he didn't have a savings account, and he
2 didn't have a separate checking account or a separate savings
3 account.

04:12:22

4 MR. SWEENEY: I don't believe that their subpoena was
5 limited to a checking account.

6 THE COURT: Okay. Well, I'm going to write in my
7 order that you're going to confirm it. I'm going to give you a
8 date by which you're going to confirm it.

9 MR. SWEENEY: We'll do that.

04:12:34

10 THE COURT: And I'm going to allow them to get from
11 you any other checking or savings account that he had, either
12 get that information from you so they can subpoena it or get
13 the information directly from your client, because you can get
14 on any savings or checking account in ten seconds online and
15 print out all those statements.

04:12:57

16 MR. SWEENEY: Okay.

17 THE COURT: You guys can work out whether you feel
18 better subpoenaing it or whether you'd take it from the
19 plaintiff, but we can all get online and do that in seconds.

04:13:23

20 MS. BABBITT: Understood.

21 THE COURT: Okay. But I'm not so interested in the
22 401(k). I want you to -- and/or the pension. Okay? Now, I do
23 want you to verify for them that he did not do a withdrawal
24 from his pension to repay.

04:13:46

25 Did you ask him that at his deposition? Did he do a

1 withdrawal from his pension to repay the train fund?

2 MR. KENNEDY: We were new counsel, Your Honor.

3 THE COURT: Okay. Did you take the dep?

4 MR. KENNEDY: No.

04:14:12

5 MS. BABBITT: No, we did not.

6 THE COURT: Okay. So I want you to verify whether he
7 withdrew money from a retirement account, any kind of
8 retirement account, pension, 401(k), annuity, all those things,
9 to repay the money. If the answer is no, we're not getting
10 into any pension, any kind of retirement documents, which I
11 would prefer. If the answer is yes, he withdrew a thousand
12 dollars or \$50 or \$500 or \$5,000 to repay that money, then they
13 have a right to those documents and those documents only. So
14 if he has a 401(k) plus his pension or an annuity plus his
15 pension, they're just going to get those documents that pertain
16 to that withdrawal. Okay?

04:14:31

04:15:00

17 MR. SWEENEY: Understood.

18 THE COURT: So very limited.

19 MR. SWEENEY: Sure.

04:15:31

20 THE COURT: Okay. Monthly statements, receipts,
21 records of all debit card, credit card, charge accounts.

22 MR. KENNEDY: Can we clarify one thing?

23 THE COURT: Okay. Hurry up.

24 MR. SWEENEY: One point. He was -- Mr. Cavelle was
25 working at CTA for about 19 years.

04:16:01

1 THE COURT: I know that.

2 MR. SWEENEY: On August 28th, they came in and advised
3 him with no prior warning on a Friday: This is your last day.

4 THE COURT: I read the complaint.

04:16:16

5 MR. SWEENEY: Okay. Then on September 1st, Monday --
6 well, they let him take all his stuff out as you're aware.
7 They do that on Saturday morning and put it in two different
8 cars.

9 THE COURT: Yes.

04:16:40

10 MR. SWEENEY: He goes away. They call him. His
11 secretary calls him on September 1st, Monday.

12 THE COURT: I read the complaint.

04:17:09

13 MR. SWEENEY: Okay. Well, then you're aware of the
14 fact that the issue with respect to when this money was missing
15 was the weekend, or if they say that he closed the account in
16 June, then the money was brought to them in a sense within one
17 day.

18 THE COURT: The question is just: Did he withdraw
19 money to repay it, or was it sitting in a box under his bed?
20 That's the only issue.

04:17:52

21 MR. SWEENEY: Okay. Well --

22 THE COURT: If he withdrew money, they have a right to
23 know that. Whether they can make hay with that or not, that's
24 a battle for another day.

04:18:06

25 MR. SWEENEY: Well, I guess (inaudible) is credit

1 cards, all these sorts of things.

2 THE COURT: Well, I'm just getting to that question --

3 MR. SWEENEY: Okay.

4 THE COURT: -- because I don't understand the

04:18:57

5 relevance of that.

6 MS. BABBITT: It's the same principle, Your Honor. We

7 wanted to determine what his spending looked like, if he was,

8 you know, taking money out of a debit account or paying off

9 other charge accounts with the cash that he received in June

04:19:17

10 when he closed the account. So I think the same ruling that

11 you had with respect to pension or 401(k), we just want to know

12 if there was money taken from these accounts to pay back that

13 money.

14 THE COURT: You want to know if he went into a debit

04:19:39

15 account -- to a credit card and said: I need to borrow \$5,000

16 from my Visa to pay back this money.

17 MS. BABBITT: Yes.

18 THE COURT: Borrow money, same question, I'll let them

19 have that. I don't care what he's spending. He might have

04:19:59

20 been spending like crazy. Three-quarters of Americans do. I'm

21 not getting involved in that. That's not relevant. If he went

22 to Visa and said "I'm going to pay you 30 percent interest to

23 borrow money to pay back CTA," I want that record. Again, he

24 can get it online.

04:20:24

25 MR. SWEENEY: I'm positive that didn't happen, so

1 we'll do it.

2 THE COURT: Verify.

3 MR. SWEENEY: Sure.

04:20:36

4 THE COURT: Only payback, I'm not -- I'm not getting
5 involved in how much he was spending and was he overspending.
6 He probably was. A lot of people do.

04:21:08

7 Okay. Oh, my God. We're only through the money.
8 Okay. Now, plaintiff's motion, you have the records, the
9 policies that you want. I don't understand the relevance of
10 kissing, having relationships. What's going on?

11 MR. KENNEDY: Judge, may I address that?

12 THE COURT: Yes.

04:21:20

13 MR. KENNEDY: John Kennedy for the record. We have
14 the same concern and the same question. I did ask counsel
15 several weeks ago: Is this question -- and they refer to it as
16 paramours -- is this question of Mr. Cavelle sleeping with
17 female employees of the CTA a part or not part of your
18 defamatory case against president Carter or the CTA?

04:21:45

19 In other words, did anybody from the CTA call the
20 folks in Seattle and say: Listen, this guy has a problem with
21 women at the CTA. He's sleeping with a lot of them. He's
22 doing this. He's doing that.

23 Whatever it is, is that part of your case? Because if
24 it is, we need to know that so we can defend against it.

04:22:03

25 And I believe counsel told me it was not part of the

1 case. The amended complaint kind of suggests that it's still
2 in there.

3 THE COURT: Okay. I did not read the amended
4 complaint. What is going on with this? I'd like to say it's
04:22:17 5 not relevant and we get it out of discovery. What is
6 happening?

7 MR. SWEENEY: So the amended complaint, we had advised
8 them, defendants, in the deposition of Dorval Carter we used
9 several exhibits that have been designated confidential.

04:22:42 10 THE COURT: Okay.

11 MR. SWEENEY: We asked them to remove the designation.
12 There has been a blanket designation.

13 THE COURT: Okay. Let's get to the question. Are you
14 alleging that there's defamation of your client based on the
04:22:59 15 fact that he is a philanderer, that he has sexual encounters,
16 mild or more intimate, with staff, with colleagues, with people
17 that he works with?

18 MR. SWEENEY: The statement that was made by Dorval
19 Carter to Robert Gannon, who's the head of --

04:23:45 20 THE COURT: Washington?

21 MR. SWEENEY: -- the King County Metra train system --

22 THE COURT: Okay.

23 MR. SWEENEY: -- he said that George Cavelle was
24 involved in inappropriate relationships with direct reports.

04:24:02 25 That's what he told Seattle.

1 THE COURT: Okay.

2 MS. BABBITT: That's what Gannon testified to.

3 MR. SWEENEY: Yeah.

4 MR. KENNEDY: So the question, Judge, is --

04:24:36

5 THE COURT: That's what who testified to?

6 MS. BABBITT: That the Seattle witness testified to,
7 Your Honor.

8 THE COURT: Oh, okay.

9 MS. BABBITT: Dorval Carter did not testify to that.

04:25:08

10 MR. SWEENEY: Mr. Carter --

11 THE COURT: Okay. So the guy in Seattle says that the
12 guy at the CTA says: Mr. CTA told me he's got a problem with
13 direct reports, a sexual relations problem.

14 MR. SWEENEY: Yes.

04:25:42

15 THE COURT: Okay. Well, it seems like that's in the
16 case.

17 MR. KENNEDY: Well, the question is: Is it? If it
18 is, we've gone down some of this road in discovery already, and
19 Mr. Cavelle's ex-wife has already testified that he was having
20 a serious relationship with another female employee, a sexual
21 relationship with another female employee, and she testified
22 that she saw on an iPad, quote, correspondence between he and
23 this female employee where he's telling the female employee:
24 I'm going to leave my wife for you.

04:26:10

04:26:42

25 That's sent back and forth. So that's an employee

1 relationship that's already at issue. That would be relevant
2 to a defense of truth.

04:27:04

3 My question is: Do they assert that as part of the
4 defamatory case or not? If it is, then I have to pursue this
5 further. If it's not, we can step back on that. I just need
6 to know. I mean, I'm not disputing his characterization of the
7 witness' statement in Seattle. Is it part of their defamation
8 claim?

9 THE COURT: Okay.

04:27:20

10 MR. SWEENEY: So we provided -- Judge Dow asked us and
11 we had already agreed to provide them a draft of the amended
12 complaint which we would intend to file.

13 THE COURT: I see. Okay. That's why I didn't read
14 it.

04:27:32

15 MR. SWEENEY: We've given it to them --

16 THE COURT: Okay.

17 MR. SWEENEY: -- and we're awaiting their response.
18 Judge Dow asked them to let us know whether they're objecting,
19 and he gave some direction as to what he would do if we brought
20 the motion. It's currently in their court.

04:28:00

21 MR. KENNEDY: So that's why --

22 THE COURT: Is it in the amended complaint?

23 MR. KENNEDY: We have, and there is some suggestion
24 that they're trying to keep this in. So I just need
25 clarification so we know where discovery needs to go.

04:28:23

1 THE COURT: Okay.

2 MR. KENNEDY: So is this something they're going to
3 argue to the judge or the jury?

04:28:33

4 THE COURT: Is it in the complaint? It sounds like it
5 is.

6 MR. SWEENEY: It is.

7 THE COURT: It is. Okay. So I take it the woman that
8 your client was -- does your client admit he was having the
9 affair?

04:28:46

10 MR. SWEENEY: They took -- they didn't, but prior
11 counsel went through the deposition and asked him about the
12 relationships already.

13 THE COURT: Okay. So he was.

14 MR. SWEENEY: So, yes, he admits that --

04:29:23

15 THE COURT: Okay.

16 MR. SWEENEY: -- with one.

17 THE COURT: Okay. So the woman he was having the
18 affair with was a subordinate.

04:29:34

19 MR. SWEENEY: She did not work anywhere near his
20 department.

21 THE COURT: Okay. But did she have less status than
22 him? I mean, would she have been a subordinate? Could it have
23 potentially created liability for the CTA?

24 MS. BABBITT: Yes.

04:30:02

25 MR. SWEENEY: He was number 3.

1 THE COURT: Okay. Okay. So that's a problem, a
2 potential problem under Title VII.

3 Okay. So you have the policies. So I'm good on your
4 motion to compel in terms of the policies.

04:30:18

5 Now what are you asking for? So you have questions
6 out then to him about, well, how many relationships were there.

7 MR. KENNEDY: How many, who, when, where, et cetera,
8 and their answer is it's unduly burdensome.

9 THE COURT: Okay.

04:30:34

10 MR. SWEENEY: Well, the answer is that we've already
11 answered all of these questions.

12 THE COURT: Right.

13 MR. SWEENEY: But if you want us to say the woman's
14 name again, we can do that.

04:30:44

15 THE COURT: Yes, and there's only one.

16 MR. SWEENEY: Right.

17 THE COURT: Okay. Well, then that's not unduly
18 burdensome, so I'm going to order you to answer that. Be sure
19 it's truthful because we don't want to get down that path. So
20 I know this is sensitive, and I'm sure your client doesn't want
21 to answer it, you know, all that. But just remind him he's
22 swearing to this and it's got to be truthful because we don't
23 want, we don't want any trouble in that regard. This is
24 obviously a very touchy case and very hotly contested, and I
25 can tell it's being very -- well, it's contentious. So just

04:31:29

1 remind your client that he needs to be truthful, although it's
2 a sensitive area.

3 Okay, nepotism. What's going on with that? I saw
4 that issue raised. Is that a thing that's a problem? Did he
04:31:59 5 hire his nephew?

6 MR. SWEENEY: They spent almost an hour at his
7 deposition the first time going through the fact that his son
8 was hired at CTA --

9 THE COURT: Okay.

04:32:11 10 MR. SWEENEY: -- who he worked for, asking whether or
11 not people advised Mr. Cavelle that there were problems with
12 his son there.

13 THE COURT: Was that a basis of the termination or
14 resignation, nepotism, a basis of the resignation?

04:32:59 15 MR. SWEENEY: What they came and told him is: We're
16 going in a different direction.

17 THE COURT: Yes, I know that.

18 MR. SWEENEY: So we don't know.

19 MS. BABBITT: Your Honor, they asked for the nepotism
04:33:22 20 order.

21 THE COURT: You're not pursuing any nepotism
22 discovery.

23 MS. BABBITT: Beyond I think what's already been
24 asked, I don't think we had any subject in the motion to compel
04:33:48 25 on that point.

1 THE COURT: Okay.

2 MR. SWEENEY: If that's off the table, then fine.

3 THE COURT: Fine.

4 MR. SWEENEY: Yeah.

04:34:00

5 THE COURT: Online presence, posting on websites,
6 social media, you've got the policies. Do you have any
7 outstanding discovery on that?

8 MR. KENNEDY: Yes, we do, Judge.

9 THE COURT: Okay. What's up with that?

04:34:15

10 MR. KENNEDY: To put it in context, Mr. Cavelle had a
11 side job or a side career, depending on how it's characterized.
12 He referred to himself as the G Cavelle Project, and he
13 represents himself to be a DJ, musician, artist, and the like.
14 He had a Facebook page at the time that has since been taken
15 down, and we wanted to get access to his Facebook page. His
16 website that he had at the time has been taken down, and we
17 wanted access to that, and his various social media.

04:34:43

18 The reason, Judge, is that as the number 3 at the CTA,
19 the images depicted in these various outlets depict Mr. Cavelle
20 in bars, depict scantily clad women. They project an image not
21 of somebody who's the number 3 and responsible for CTA safety,
22 but somebody who's out clubbing and suggests a certain
23 lifestyle that doesn't reflect the gravity of the job that he
24 holds.

04:35:11

04:36:02

25 We wanted to -- that was part of the culture that

04:36:38

1 Mr. Cavelle had when he was at the CTA. Oftentimes, and one in
2 particular where there was a catastrophe, where there was a
3 derailment, Mr. Cavelle was at one of these jobs, these side
4 jobs, and the bottom line for the person in charge of safety is
5 you're on 24/7. If you're not available, you make plans to
6 have your underlings cover everything, and you're instantly
7 available by phone.

04:37:01

8 So this side career was an issue that we do intend to
9 inject into the trial because it gets into that the person
10 who's now representing the CTA to the media and to the public
11 is now also available online doing all these other sorts of
12 things that put the CTA in the worst possible light.

13 THE COURT: Well, I mean, I can see why that's
14 interesting.

04:37:20

15 MR. KENNEDY: But it's part of the reason why the CTA
16 was done with him.

04:37:46

17 THE COURT: Well, right, but it doesn't -- how does it
18 go to defamation if you didn't relay this stuff to Seattle, and
19 how does it go to tortious interference? I mean, he's not
20 suing you for termination, is he?

21 MR. SWEENEY: No.

22 THE COURT: So I get in a classic Title VII or in a,
23 you know, termination case, yes, this is why you terminated
24 him, that he's a disaster, but I don't -- what's the relevance?

04:38:06

25 MR. KENNEDY: Well, it depends on what -- again,

1 that's why I asked for the clear boundaries of their claim.
2 What do they say the CTA or president Carter or whomever said
3 is a defamatory statement? Are they saying that we falsely
4 alleged that Mr. Cavelle had issues with respect to spending a
04:38:30 5 lot of time in bars or with respect to spending a lot of time
6 in this other lifestyle. If they're not putting those at
7 issue, then I can pull back on that.

8 THE COURT: Is that it? I mean, I get that they
9 said as I'm understanding it, they said something about he
04:38:52 10 stole from them --

11 MR. SWEENEY: Right.

12 THE COURT: -- which has to do with this train fund,
13 charitable train fund, and then he had sexual relations with a
14 subordinate. You know, you have a right to defend on that and
04:39:10 15 truth and all that, but did anything come up about his either
16 having extra employment, which I don't even know if you're
17 allowed to do, but okay there's that, and then the type of
18 extra employment? You know, whether it's being an altar boy or
19 whether it's running in a bar, was any of that reported to
04:39:37 20 Seattle?

21 MR. KENNEDY: Well, counsel had mentioned it earlier.
22 There's an e-mail that was sent to the former president of the
23 CTA Frank Kruesi from president Carter where president Carter
24 talks about Mr. Cavelle's drinking and essentially an
04:39:57 25 intervention by his colleagues or friends to address his

1 drinking.

2 THE COURT: Okay.

3 MR. KENNEDY: It alludes to this sort of thing. So if
4 they're claiming that we, the CTA or Mr. Carter, president
04:40:11 5 Carter, made statements to the Seattle folks saying "this guy
6 has an alcohol problem or a cocaine problem and you ought to
7 take heed," then we have to get into that.

8 If they're saying, "well, that's not part of our case,
9 counsel," then we can adjust discovery appropriately.

04:40:31 10 MR. SWEENEY: So what counsel is referencing is an
11 e-mail that Mr. Carter sent to the former president of the CTA,
12 Frank Kruesi.

13 THE CLERK: Counsel, I'm sorry to interrupt.

14 MR. SWEENEY: Oh, I'm sorry.

04:41:10 15 THE CLERK: Can you move the mic a little closer to
16 you?

17 MR. SWEENEY: Yeah.

18 THE CLERK: Thank you.

19 MR. SWEENEY: What the current president, Dorval
04:41:20 20 Carter, sent to Frank Kruesi was an e-mail in which he said
21 that Mr. Cavelle stole \$6,100 and that they made him pay it
22 back. That's not true. They said that he was a potential drug
23 abuser and abused alcohol and that there was going to be an
24 intervention by his friends. I forget the details. We've
04:42:09 25 given it to them in the amended complaint, but to the extent

1 we're going to get into the fact that he -- he did list the CTA
2 does have a policy with respect to secondary employment, and he
3 did list that he did this as secondary employment, even if he
4 didn't get paid most of the time, and I don't believe that the
04:42:44 5 G Cavelle Project had anything to do with anything that was
6 said to either Seattle or to Mr. Kruesi. It looks like they're
7 just trying to embarrass him.

8 THE COURT: So the defamation, it goes to Seattle and
9 to the former president of CTA?

04:43:11 10 MR. SWEENEY: Yes.

11 THE COURT: I see. So to the former president of
12 CTA -- and maybe president Carter didn't communicate this to
13 Seattle -- but to the former president of CTA who I imagine has
14 a number of contacts in this area, president Carter also raised
04:43:38 15 this drug abuse, potential drug abuse and alcohol abuse issue,
16 which means this kind of more a lifestyle issue.

17 MR. SWEENEY: I don't know if that would be lifestyle
18 but, yeah, he did say that to Mr. Kruesi.

19 THE COURT: Okay. And you have a claim for that.

04:44:11 20 MR. SWEENEY: Yes.

21 THE COURT: That he should not have, that president
22 Carter should not have said that.

23 MR. SWEENEY: That's true.

24 THE COURT: Okay.

04:44:18 25 MR. SWEENEY: But we're saying if you take somebody's

1 Facebook page, for instance, and start using that as -- I don't
2 know why you'd be using it, but pictures of people that they
3 might have posted on their Facebook page or linked on their
4 Facebook page, that doesn't go at all to the issues raised with
5 Mr. Kruesi.

04:44:43

6 THE COURT: So they're -- so president Carter is
7 moving to discover the Facebook postings.

8 MR. SWEENEY: Say it again?

9 THE COURT: So president Carter is moving to discover
10 the Facebook postings.

04:44:57

11 MS. BABBITT: As well as his website, Your Honor,
12 which has the images we believe with him with drugs -- or not
13 drugs, drinking, nightclubs, that sort of thing.

14 THE COURT: Okay. So here's my thought on that. I
15 think you can have a fight about the admissibility of this
16 stuff, and there's a lot of fights in the courts about
17 admissibility of this kind of stuff. But given that president
18 Carter is -- I thought that the defamation was limited to what
19 went out to Seattle, but given that he also has this
20 communication with the former president of CTA and it's a
21 little broader because it's going kind of after the character
22 of the plaintiff in terms of his use, I think that this is fair
23 game. So whether Judge Dow is going to admit it, that's a
24 fight for another day.

04:45:49

04:46:14

25 But what does it take to get this discovery? I mean,

04:46:39

1 this is -- this gets beyond my technical capacity. I don't
2 know how old these websites are or how old these Facebook posts
3 are, so that would be my question in terms of -- and I know
4 he's moved to Florida, so there's been some moving of the
04:47:04 5 computer and stuff.

6 But I think it's fair to go after these. I don't know
7 if that means subpoenaing something, someone, Facebook,
8 something like that, but I think it's fair for them to have
9 access to this. If Judge Dow thinks you shouldn't use it,
04:47:24 10 that's fair. You can have that fight later, but I think it's
11 fair for you to get it.

12 You know, I would wonder has doctor -- or has
13 president Carter seen it. So I don't know that it really
14 informed him at all, but that's a fight for another day.

04:47:55 15 MR. KENNEDY: Right. And the last person that
16 controlled all of these areas of social media was the owner of
17 these sites, Mr. Cavelle.

18 THE COURT: Of course.

19 MR. KENNEDY: So he would have --

04:48:18 20 THE COURT: But that doesn't mean that Mr. Carter had
21 any idea of any of this.

22 MR. KENNEDY: No, no.

23 THE COURT: But that's a different fight.

24 MR. KENNEDY: Right. My point is getting to your
04:48:36 25 technical question, who's in the best position to re-access

1 these. It's the person who owns those website pages and can go
2 to the servers, the website or the Facebook pages, and say: I
3 need to regenerate the archives of these various websites and
4 have them --

04:49:09

5 THE COURT: Right.

6 MR. KENNEDY: -- as opposed to a third party coming in
7 and subpoenaing them, which is a whole different battle.

04:49:28

8 THE COURT: Right. I would not have the technical
9 capability to access my old Facebook page, but I'm happy to say
10 in an order that plaintiff has to produce these. But I also
11 understand that that's easier said than done, given the age of
12 them. So I think it's fair game that they be produced, but I
13 want the parties to work together to get them produced.

04:49:54

14 It might be that you have to send this 2015 computer,
15 which probably doesn't work anymore because we're in 2019 and
16 they do die after two or three years, you know, to somewhere to
17 get it re-accessed.

18 MR. SWEENEY: We will. We can attempt to do what
19 you're asking. I think I understand what you're saying.

04:50:15

20 THE COURT: Yes.

21 MR. SWEENEY: I tell you that George Cavelle is not
22 the most technically advanced individual.

23 THE COURT: Right.

04:50:26

24 MR. SWEENEY: When we say that, I think the language
25 we're using here probably isn't accurate. He didn't own the

1 website, so he never like hosted it. But we can certainly
2 provide information as to who did and help assist in trying to
3 recover whatever might be there.

04:50:49

4 THE COURT: Okay. So, counsel, you have -- I've been
5 looking at your requests for production. You know, I'm trying
6 to follow on the motions that are pending, and you have some
7 rog requests, interrogatories 3, 4, 6, and 7. Have I hit those
8 by talking about the websites, the financial documents?

04:51:17

9 MS. BABBITT: Your Honor, I think the rog requests
10 that we had still outstanding, 3 and 4 were specific questions
11 that we had with respect to cash withdrawals from his Chase
12 Bank checking account. So those, I think we need additional
13 information specific to the answer. We're asking for, you
14 know, why he withdrew it, the reason and purpose, the identity
15 of the receipt of these withdrawals. Those two are still
16 outstanding. I think 6 and 7, based on your rulings today, are
17 resolved based on your rulings.

04:51:46

18 THE COURT: Okay. So are you guys able to talk about
19 these? They're very specific.

04:52:12

20 MR. SWEENEY: He has -- I can represent he has no
21 recollection of specific withdrawals from his bank account --

22 THE COURT: Okay.

23 MR. SWEENEY: -- relative to those.

24 THE COURT: I mean, one of these questions is:

04:52:26

25 There's a check to David Moreno for \$2,000, and who is David

1 Moreno?

2 MR. SWEENEY: I'm trying to recall from his deposition
3 because I think they asked him about this. I believe he was a
4 -- I can't say. I can't say.

04:52:49

5 THE COURT: Okay.

6 MR. SWEENEY: If he was a friend or relative, I can't
7 say.

04:53:03

8 THE COURT: Yes. I mean, I feel like the document
9 production that I'm ordering and the verification is adequate,
10 and I'm not going to order, I'm not going to order responses to
11 these.

12 MS. BABBITT: Okay.

13 THE COURT: Okay?

14 MS. BABBITT: Understood.

04:53:11

15 THE COURT: Okay.

16 MS. BABBITT: And, Your Honor, I have one final point
17 on the interrogatory answers. Mr. Cavelle hasn't provided a
18 verification.

19 MR. SWEENEY: We can.

04:53:23

20 THE COURT: Okay.

21 MR. SWEENEY: Certainly.

22 THE COURT: I'm going to give you a date certain to do
23 that.

04:53:29

24 MR. KENNEDY: Judge, if I could just add for the
25 record?

1 THE COURT: Yes.

2 MR. KENNEDY: I'm advised by somebody who is much more
3 savvy with them that oftentimes these websites are archived and
4 can be revived pretty simply.

04:53:42

5 THE COURT: I think they all can be. I just think you
6 have to pay or you might have to pay somebody to do that if
7 you're not savvy enough to do that. I mean, I think they all
8 can be. They all exist forever. That's what we're told,
9 right?

04:53:56

10 MR. KENNEDY: Yeah.

11 THE COURT: So I'm finding that they have to be
12 produced, but you guys are going to have to work together to
13 get them produced and there might be some costs to it. Even
14 though we think it's simple, you might have to pay somebody to
15 help.

04:54:14

16 Okay. So I think I've dealt with defendants' motion.
17 I think plaintiff's motion basically is done, although
18 plaintiff had some December discovery requests. You raised it
19 in your motion, but then I don't think you had really met and
20 conferred, and I don't know if I'm -- am I supposed to be
21 ruling on that, or are you guys still working that out? Is it
22 due yet, and what's happening with that?

04:54:39

23 MR. KENNEDY: There's been no meet-and-confer, and
24 it's not due yet.

04:54:55

25 THE COURT: Okay. So I'm okay?

1 MS. BABBITT: Sorry. If I can clarify that a little
2 bit, there was discovery that was --

3 THE COURT: Let's let the person who's really doing
4 all the work get into it.

04:55:08 5 MR. KENNEDY: Judge, I'll see you later.

6 THE COURT: There you go. Nice meeting you.

7 MS. BABBITT: I might have to order this transcript
8 now, Your Honor.

9 So the discovery that was issued to defendant CTA was
04:55:22 10 answered timely. The identical requests for production and
11 interrogatories were also issued to president Carter. We
12 provided counsel this morning with those written responses --

13 THE COURT: Okay.

14 MS. BABBITT: -- which generally are part and parcel.
04:55:42 15 The other broader subject of the plaintiff's motion to compel
16 was those policies that they said --

17 THE COURT: Yes, yes.

18 MS. BABBITT: -- had not been produced, and we
19 identified those by Bates range.

04:56:10 20 THE COURT: Okay. So they're going to look at
21 president Carter's responses. You may or may not have issues
22 with them. You may or may not have issues with the CTA
23 responses. You'll meet and confer, and we'll stay tuned.

24 Okay. Now we have the motion under seal. That's all
04:56:35 25 that's left. Okay. So tell me a little bit about what

1 happened.

2 MR. KENNEDY: Judge, could I ask if it's okay if the
3 general counsel approaches as well?

4 THE COURT: Sure.

04:56:47

5 MR. KENNEDY: For the record, Karen Seimetz.

6 I'll do my best to frame the question, Judge, or the
7 issue, and it's part of the motion to compel.

8 THE COURT: I was thinking maybe plaintiff would tell
9 me what happened.

04:57:02

10 MR. SWEENEY: So I think they've attached as Exhibit 1
11 the February 6th e-mail where we learned that there was an
12 issue surrounding potential statements made to witnesses in
13 this case.

04:57:29

14 THE COURT: And are those witnesses people who work at
15 the CTA right now?

16 MR. SWEENEY: Yes.

17 THE COURT: Okay. And did you learn about that
18 through your client?

19 MR. SWEENEY: Yes.

04:57:39

20 THE COURT: Okay. So your client is living in
21 Florida. He's a former employee, but he still has friends, of
22 course, who work at CTA.

23 MR. SWEENEY: He worked there for two decades.

24 THE COURT: Of course.

04:57:55

25 MR. SWEENEY: Yeah. So I want to, I guess, be careful

1 with respect to privilege issues, but we became aware of
2 statements being made to potential witnesses in the case that
3 were interpreted as threatening. We obviously had been going
4 back and forth through several meet-and-confers.

04:58:32

5 There's a lot of discovery at this point where we
6 talked about a number of issues. It seemed like, based on what
7 we were hearing, that there was a significant amount of
8 activity happening over at CTA with respect to witnesses. I
9 don't know. We've talked about it. We've looked at it in
10 terms of how could the statements that were made be
11 interpreted. Would they be something that would be actionable?
12 Would we bring a motion based on it or something more than
13 that?

04:59:20

14 THE COURT: When you say "actionable," do you mean --
15 MR. SWEENEY: Bring it to you, bring it to Judge Dow.

16 THE COURT: So do you mean that the witnesses would
17 have a cause of action, or you mean to raise it in this case?

18 MR. SWEENEY: Raise it in this case.

19 THE COURT: Okay.

04:59:30

20 MR. SWEENEY: Whether we would do something that
21 would --

22 THE COURT: Okay. Just since I'm new to the case, how
23 many witnesses from CTA are we really dealing with? I mean, we
24 have your client, and we have the person who terminated him. I
25 know. It's a resignation. Then we have Dr. Carter, and we

05:00:14

1 have the new direction. But how many people are really dealing
2 with the issues over there? I mean, we have the woman who had
3 the affair with him. That's a problem. That's a witness who's
4 put in an uncomfortable position. How many other witnesses are
5 over there?

05:00:41

6 MR. SWEENEY: So one of the -- well, we both
7 identified a ton.

8 THE COURT: Okay.

9 MR. SWEENEY: I would say I can't remember off the top
10 of my head, but I know we're both over 20.

05:00:50

11 THE COURT: So 20 total, you think? 20 to 25 total?

12 MR. SWEENEY: No, I think we've identified in the
13 26(a)'s close to 50 witnesses. That's my guess.

14 THE COURT: At CTA.

05:01:16

15 MR. SWEENEY: Yes. And the issue that seems to
16 implicate the most witnesses, but it's a small issue, is the
17 exhibit that was attached to the complaint, which is what we
18 referred to as a wanted poster.

19 THE COURT: Yes, I saw that.

05:01:37

20 MR. SWEENEY: So to this point, counsel that was
21 involved representing the defendants before this had indicated
22 to us that the CTA's position was or was going to be that the
23 wanted poster was a practical joke done by someone at the CTA
24 who they could not identify. Discovery went based on that
25 premise.

05:02:10

1 THE COURT: That was prior counsel?

2 MR. SWEENEY: Yes.

3 THE COURT: Okay. Was the -- did the poster appear
4 after the resignation?

05:02:24 5 MR. SWEENEY: Yes.

6 THE COURT: Okay. And we all agree on that?

7 MR. KENNEDY: It surfaced shortly after the
8 resignation.

9 THE COURT: Okay.

05:02:32 10 MR. SWEENEY: So we actually have -- and this is why
11 we didn't think that this was going to be the issue that it has
12 become. On September 16th, we have the chief of security,
13 Mr. Keating, sending an e-mail to the chief of staff to
14 president Carter with a copy of the wanted poster attached to
05:04:05 15 his e-mail, telling the chief of staff: This has been sent to
16 me, and it's appearing on our property.

17 It appears that someone -- he called it photo-bombed
18 in the e-mail. I think he meant photo-shopped. Someone
19 photo-shopped a picture of George Cavelle and put it on a
05:04:37 20 different lookout bulletin for a different employee who had
21 been seen on a Facebook page with guns and dismissed --

22 THE COURT: I see. Okay.

23 MR. SWEENEY: -- on August 28th. So he sends it to
24 the chief of staff on the 16th of September. On the 18th of
05:04:55 25 September, an assistant, like an admin assistant sends it to

1 Mr. Cavelle's replacement and to Dave Kowalski, who was a
2 special advisor to president Carter. She sends a screenshot of
3 the wanted poster to Mr. Bonds and Mr. Kowalski and says: We
4 need to figure out where this is.

05:05:35

5 Mr. Cavelle is not involved. He's not on the
6 property. He doesn't have access to CTA. He's been dismissed
7 for more than three weeks at this point.

05:06:13

8 THE COURT: So at this point from the e-mails you're
9 seeing, the CTA, the officials at least that are e-mailing this
10 around seem to be taking this seriously, I mean, responding
11 appropriately.

12 MR. SWEENEY: Well, they certainly --

13 THE COURT: This has been photo-bombed or
14 photo-shopped, and we need to figure out what's happening here.

05:06:38

15 MR. SWEENEY: They certainly looked at it.

16 THE COURT: Okay.

17 MR. SWEENEY: And the question is what happens next --

18 THE COURT: Okay. So now we're on the 18th of
19 September.

05:06:48

20 MR. SWEENEY: -- and where this poster was. So
21 there's been testimony in the case from the ex-wife. They
22 apparently had a condo close to headquarters of CTA. She's a
23 dog walker, and she claims that she saw it on, I believe, a
24 pylon taped up outside of CTA headquarters. We have also

05:07:17

25 identified 26(a)(1) witnesses, a host of them that say they saw

05:08:13 1 the poster at -- well, I should say Maria Roberts who works at
2 headquarters said she saw it behind the security desk at the
3 loading dock. Then there's other witnesses that say they saw
4 it at both the Rosemont and Des Plaines depots, that they saw
5 the poster.

6 THE COURT: Okay.

7 MR. SWEENEY: So --

8 THE COURT: And have these people been deposed, or we
9 know that these are just statements made?

05:08:36 10 MR. SWEENEY: Two have. Two have.

11 THE COURT: Okay. Oh, they have been. So under oath
12 they've said: I've seen it at this depot. I've seen it at
13 this depot.

14 MR. SWEENEY: Yes.

05:08:59 15 THE COURT: Okay.

16 MR. SWEENEY: So --

17 THE COURT: So they felt free to testify to this at
18 least.

19 MR. SWEENEY: Those people did, yeah.

05:09:08 20 THE COURT: Okay.

21 MR. SWEENEY: So the case has sort of proceeded with
22 the assumption that, okay, it was a joke, that it was posted at
23 multiple locations owned by the CTA, places that Mr. Cavelle
24 could not get to, and that's --

05:09:30 25 THE COURT: Is anyone saying that Mr. Cavelle did

1 this?

2 MR. SWEENEY: Well, that's where we're going. No one
3 had said that --

4 THE COURT: Okay.

05:09:38

5 MR. SWEENEY: -- until recently. There's been an
6 assertion. Well, they haven't gone so far as to say it, but
7 they've insinuated that Cavelle did this back in 2015 and that
8 he's responsible for it.

9 THE COURT: Okay.

05:10:10

10 MR. SWEENEY: Now keep in mind that he didn't file a
11 lawsuit until after Seattle in 2017.

12 THE COURT: Yes. Can I get back to -- and all this
13 happened around 2015, around the resignation, the depots.

14 MR. SWEENEY: It looks three weeks after.

05:10:28

15 THE COURT: Okay. Can I just get back to one thing
16 then before I go to defendants? Is any of this posting part of
17 the claim? Is any of this or does any of this make up the
18 defamation?

19 MR. SWEENEY: Yes.

05:10:44

20 THE COURT: Okay. So how does that happen? I just
21 want to understand the proof. How is the CTA -- how are you
22 going to get there?

23 MR. SWEENEY: So the amended complaint also brings a
24 false light claim.

05:11:14

25 THE COURT: False?

1 MR. SWEENEY: False light.

2 THE COURT: False light?

3 MR. SWEENEY: False light.

4 THE COURT: Oh, okay. I didn't know that.

05:11:21

5 MR. SWEENEY: And based on the testimony we've gotten
6 pretty much from every CTA employee that we've asked about it,
7 those bulletins are only posted for individuals who pose a
8 threat.

05:11:44

9 THE COURT: So false light, that's a state claim. I
10 don't know that. So you paint someone in a false light?

11 MR. SWEENEY: Yeah.

12 THE COURT: And you get damages for that? Do you have
13 to impact their employment opportunities or, I mean, what's the
14 damage?

05:12:08

15 MR. SWEENEY: There is no special damage requirement,
16 so you can assert damage to reputation.

17 THE COURT: And how is the CTA or how do you prove
18 liability? Like, who in the CTA has to be responsible for
19 that?

05:12:29

20 MR. SWEENEY: And I think that's where the fight --

21 THE COURT: I mean, if some bus driver did this as a
22 joke, you know, photo-shopped it because they had some issue
23 with him, stupid, but some low-level employee, does that create
24 liability for CTA or director Carter?

05:13:03

25 MR. SWEENEY: We think the liability will come, if not

1 from permitting this to be posted on multiple places and not
2 having control of your systems that allow someone to do that,
3 the fact that you didn't take some sort of remedial action to
4 notify the -- one, the investigation as it's been described to
05:13:32 5 us by counsel was: Well, we took them down.

6 THE COURT: Okay.

7 MR. SWEENEY: We've asked a ton of questions about:
8 Well, you know, how did you do it? Who did it?

9 THE COURT: Okay.

05:13:48 10 MR. SWEENEY: All that kind of stuff.

11 THE COURT: Okay.

12 MR. SWEENEY: And we're getting --

13 THE COURT: So getting back to witnesses being
14 threatened, how do we get back to that?

05:13:59 15 MR. SWEENEY: So a lot of people saw it --

16 THE COURT: Okay.

17 MR. SWEENEY: -- saw the poster at various places.

18 THE COURT: Sure.

19 MR. SWEENEY: The new theory that Mr. Cavelle may have
05:14:10 20 created the document or some -- I don't know -- conspiracy of
21 people that would have done it to plant it at various places
22 that he wouldn't be able to get to, because I assume that's --
23 they're going to have to explain how it got throughout the
24 system.

05:14:46 25 THE COURT: Sure. So how are we getting to someone

1 being -- I mean, I'm hearing witnesses give you good testimony.

2 MR. SWEENEY: Witnesses see it. Witnesses see it.

3 THE COURT: Okay. And they tell you that under oath?

4 MR. SWEENEY: Two have.

05:15:13

5 THE COURT: Okay.

6 MR. SWEENEY: And we didn't think it was going to be a
7 contested issue with respect to that people saw it in other
8 places.

9 THE COURT: Okay.

05:15:25

10 MR. SWEENEY: We didn't think it was going to be a
11 contested issue that someone on their side put it together.
12 Apparently a lot of people were contacted who may have seen the
13 poster --

14 THE COURT: Okay.

05:15:41

15 MR. SWEENEY: -- and statements were made to at least
16 one that we know that I don't think there's much you could do
17 to interpret it that you wouldn't say it's threatening.

18 THE COURT: So statements were made to one of these
19 potential witnesses that said what? What was said?

05:16:09

20 MR. SWEENEY: The witness was told that he needs to go
21 down to headquarters. He's being quarantined for a week. If
22 he testifies for the CTA, it will be paid for. If he doesn't,
23 then he'll have to make up the shifts. Now keep in mind, this
24 is a case where this person is not a party and has no

05:16:51

25 involvement other than seeing a poster.

1 THE COURT: So let me understand. He has to go down
2 to headquarters for a week. That means he's pulled.

3 MR. SWEENEY: That's what he was told.

4 THE COURT: He's pulled out of his job.

05:17:15

5 MR. SWEENEY: That's what he was told.

6 THE COURT: Okay. When you're down at headquarters
7 for a week, you're going to work every day, but you're going
8 down to headquarters. So you're doing some other job, maybe a
9 menial task or something, an administrative task.

05:17:30

10 MR. SWEENEY: I don't think he's doing anything.

11 THE COURT: Okay, so just sitting Downtown. Then you
12 have your deposition, and during your deposition if you testify
13 for CTA --

05:17:47

14 MR. SWEENEY: It's not a deposition. He's not being
15 deposed.

16 THE COURT: Okay.

17 MR. SWEENEY: He's being interviewed --

18 THE COURT: Okay.

19 MR. SWEENEY: -- by CTA lawyers.

05:17:53

20 THE COURT: Okay. So if during that interview or at
21 trial or if he's called to be deposed or whatever, if when
22 things happen he makes statements favorable to CTA, he'll be
23 paid for those 40 hours down in headquarters. If he doesn't,
24 if he says, "yes, I saw the poster or I know who made the
25 poster," or whatever that information is, he then will not be

05:18:22

1 paid for that 40 hours of time?

2 MR. SWEENEY: So you're reading into it the same way
3 that we did and the same way the witness did.

4 THE COURT: Okay.

05:18:37

5 MR. SWEENEY: I'm not involved in this case. You want
6 me to go to headquarters. You want me to talk to the CTA
7 lawyers. Why wouldn't my time be paid for no matter what?

8 THE COURT: Was this person -- is this person on a
9 26(a)?

05:18:53

10 MR. SWEENEY: He is.

11 THE COURT: On your 26(a)?

12 MR. SWEENEY: I think he's on both, but he's
13 definitely on ours.

14 THE COURT: Is he going to be deposed anyway?

05:19:03

15 MR. SWEENEY: Probably. I don't know. We weren't
16 anticipating having to depose these people because there could
17 be a number of them.

18 THE COURT: Well, is this the only threat we know
19 about?

05:19:16

20 MR. SWEENEY: Yeah.

21 THE COURT: Okay.

22 MR. SWEENEY: And keep in mind, we specifically
23 reached out to counsel and said: We've become aware of an
24 issue. We don't want to turn it into a federal case. We don't
25 believe you did it, we don't think the attorneys at CTA would

05:19:34

1 necessarily do it, but this is what's being communicated.

2 Please make it stop.

3 THE COURT: Well, it's hard for them to make it stop
4 when they don't have any information, and I don't want to spend
05:19:53 5 a lot of time on -- I appreciate all your exhibits and that you
6 tried to reach out and you tried to figure out what's going on,
7 and I can kind of understand your reluctance. I get that this
8 is a very contentious case. I've already said that. So I
9 don't want to get too involved in the weeds in how many times
05:20:16 10 you asked for information so that you could do what it is your
11 job to do. I know you would have done that and taken it very
12 seriously.

13 I also don't want this to get away from us because I
14 think we've got enough challenges in this case, given the
05:20:35 15 allegations. So, I mean, one thing that's coming to my mind is
16 why don't we just depose this guy in two weeks and get it
17 behind us. Let him come in and tell the truth. Then if we're
18 very concerned about it, we can do the deposition in my jury
19 room, and he can feel comfortable and get it done.

05:20:57 20 Because I think people can feel very concerned, and I
21 assume this information is coming from your client -- I could
22 be wrong about that -- and I'm sure he's very emotional and
23 he's got friends. So I just think things can be very --
24 sometimes can be misconstrued and misunderstood. Maybe the
05:21:30 25 client or maybe the plaintiff heard something and then felt --

1 I mean, have you talked to this witness?

2 MR. SWEENEY: I wouldn't do that.

3 THE COURT: Oh, right, because he's a current
4 employee, right. I'm sorry. So I don't know. I mean, I don't
5 want to --

05:21:46

6 MR. SWEENEY: I will tell you --

7 THE COURT: I don't want to just push this under the
8 rug, but I also don't want it to blow up where then I have 20
9 witnesses who are coming in here saying: Somebody looked at me
10 sideways, and now I'm feeling like I can't do my job, or I'm
11 getting fired and it's because -- you know, you can't run your
12 shop because these people are on a 26(a) list and you're afraid
13 that if you put someone on a PIP it's going to be a problem
14 because they're on a 26(a) list.

05:22:23

15 You know, I mean, this could get unnecessarily crazy
16 when it could have been a misunderstanding, although I hear you
17 that this is a very peculiar thing for anybody to say. Do we
18 know who said it?

05:22:50

19 MR. SWEENEY: Yes.

20 THE COURT: Okay. Well, it seems that person maybe
21 needs some counseling about how to interact. Was it somebody
22 in authority?

05:23:08

23 MR. SWEENEY: Yes, and so the concern is clearly on
24 the witness' side.

25 THE COURT: Of course.

05:23:30

1 MR. SWEENEY: You know, he's been in the CTA for a
2 long time. You know how things work.

3 THE COURT: Of course. Of course.

05:23:41

4 MR. SWEENEY: People have long memories. There's a
5 lot of concern: I'm going to somehow be adversely affected in
6 my employment now because of something.

7 THE COURT: Okay.

8 MR. SWEENEY: And the bigger the issue becomes, the
9 greater the concern.

05:23:59

10 THE COURT: Well, it's a big issue.

11 MR. SWEENEY: Sure.

12 THE COURT: We've got a document under seal, and we've
13 got six lawyers in court. What would you like to say?

05:24:27

14 MR. KENNEDY: Several things, Judge. I'm biting my
15 tongue. There has been before Your Honor as we sit here today
16 a conscious and intentional and deliberate slide of what's
17 happened here. They told us today that they had an issue that
18 they were fronting with us about witness tampering. That is
19 not true. They don't have an issue. What they said on

05:24:55

20 February 6th was the CTA was engaging in, quote, blatant
21 witness tampering and that they were going to pursue discovery
22 on it. That was on the 6th, and Your Honor notes that I asked
23 five times. They never gave me an answer. I met and conferred
24 with them, and they said: We're not authorized to tell you.

05:25:31

25 So I fronted it with Judge Dow because this is a class

1 3 felony and general counsel for the CTA and I as counsel need
2 to get in front of this. Two things are going on. So that's
3 the first misrepresentation that there was an issue, their
4 February 6th e-mail. He states:

05:25:57 5 "CTA has threatened potential witnesses in this case
6 with loss of pay or potentially more serious repercussions if
7 they do not testify to the CTA's favor. This constitutes
8 blatant witness tampering and is unethical."

05:26:29 9 I have a right to know and the CTA has a right to know
10 and the Court has a right to know who said this to any of our
11 people, when did they say it, what did they say, and how was it
12 received. Was it e-mail? Was it directly? They won't tell us
13 who said it. They won't tell us who heard it. They won't tell
14 us, other than what we heard today, what was said. And now
05:26:54 15 we're learning for the first time that it's secondhand through
16 Cavelle who also won't say, and now they're also hiding behind
17 a privilege. As soon as they raise this issue, there's a
18 subject matter waiver. So they're using the privilege as a
19 sword and a shield to say: We're going to inject and taint
05:27:16 20 this entire proceeding with this notion of witness tampering so
21 that any CTA witness who testifies against Cavelle is going to
22 be marked with the potential for having been tampered with.

23 We're shadow boxing in the dark against a ghost
24 because they won't disclose. I would love, Your Honor, to put
05:27:53 25 people under oath and ask: Who told you to sharpen your

1 testimony in favor of CTA? When was it said, and how did they
2 say it?

05:28:18

3 Your Honor, that's exactly what should happen in this
4 case. This is the most cynical tactic, and the premise for all
5 this is they say: The CTA has changed its position. It's not
6 a wanted poster. It's a lookout poster.

05:28:50

7 The CTA has never taken a position in this case in any
8 of its pleadings that this document was a CTA document
9 promulgated as a practical joke. We have been attempting to
10 get to the foundation and authenticity of the document from day
11 1, and counsel still to this day refuses to answer that
12 discovery. Here's how that becomes important.

13 THE COURT: Wait. You served discovery about the
14 poster?

05:29:12

15 MR. KENNEDY: I've asked how did counsel get it. I've
16 asked it in discovery.

17 MS. BABBITT: How did plaintiff get it.

05:29:26

18 MR. KENNEDY: How did plaintiff get it. Here's the
19 best information, which is an incredible gap. In 2015, this
20 thing is circulated. Internal people at the CTA said that this
21 thing is circulated, and it comes down within days. In 2015,
22 the ex-wife says: I saw it on a pylon on the outside of the
23 headquarters.

05:29:50

24 There's no pylons on the outside of the headquarters.
25 There are supports. Nevertheless, she says: I saw it on the

1 outside on the pylons in 2015. I called George and said I
2 didn't know you were fired.

3 Then he hangs up quickly after saying a few words.
4 She doesn't take a photograph of it. She doesn't take it down.
05:30:16 5 She doesn't send it to him.

6 Another person says he saw it at the CTA headquarters.
7 She doesn't take a photograph of it. She doesn't take it down.
8 She doesn't send it to him.

9 Another person said he saw it in Rosemont. He doesn't
05:30:33 10 take a photograph of it. He doesn't take it down. He doesn't
11 send it to him.

12 So I'm now confronted with where the heck did this
13 document come from and how did it become Exhibit B to a
14 complaint filed two years later. So I ask: How did you get
05:30:54 15 this document?

16 They won't tell me. So the ex-wife says --

17 THE COURT: What happened at the dep?

18 MR. KENNEDY: Well, here's what the dep says. Here's

19 what Cavelle says. Cavelle says in 2017, two years after he

05:31:15 20 was let go and on the eve of the filing of this lawsuit, his

21 ex-wife called her divorce lawyer and said there's a poster

22 issue. Her divorce lawyer calls his divorce lawyer and says

23 there's a poster issue. His divorce lawyer calls counsel

24 standing before you today and says there's a poster issue. So

05:32:01 25 that's two years later, when everybody else has said they never

1 sent it to George Cavelle.

2 So I said to counsel: How did your client get it?

3 Then he says: Well.

4 Then I said: Well, I want to see those e-mails. If
05:32:17 5 that's the only chain of custody you have to authenticate this
6 document, I'm entitled to see it and it's not privileged.

7 He said: Well, I'll check my e-mails, but he hasn't
8 gotten back to me yet. Maybe I'll have to assert a privilege.

9 That's a fair question. They're saying it's a CTA
05:32:49 10 document. Your Honor's question is spot on. How is that
11 liability against the CTA? They also know, because I gave an
12 offer of proof, it's not a CTA document. The CTA database
13 creates these posters in the normal course using CTA photos
14 from their HR database. The photo on the bulletin is not in
05:33:26 15 their database. And every one of those bulletins is preserved.
16 This is not a document preserved in the database. Third, this
17 was a bulletin created for Mr. X. Somebody just took Cavelle's
18 picture on an authentic CTA document, put his mug on there, and
19 said there's a lookout bulletin.

05:34:20 20 THE COURT: Right.

21 MR. KENNEDY: And now they're saying --

22 THE COURT: So you've a motion on this count. I mean,
23 you're going to file a motion on this count.

24 MR. KENNEDY: I will. But the witness tampering, if
05:34:35 25 it's based on this notion of a lookout bulletin, I don't care

1 what the contested issue is for the case. We're entitled to
2 know who, what, where, when, and how, and they should do it
3 under oath and they should do it under seal so that it's
4 transparent to the Court and so that the CTA isn't marred by
05:34:58 5 this. Then when we have a trial, no jury and no judge is going
6 to have to deal with: Well, I wonder if they're putting their
7 thumb on the scale because they were tampering.

8 It's outrageous to suggest any of it is true without
9 any foundation, and they still slide from it from Your Honor.

05:35:40 10 THE COURT: So --

11 MR. SWEENEY: There's so many things that I want to
12 respond to, but I'll --

13 MR. KENNEDY: Judge, general counsel would also like
14 to talk on this.

05:35:53 15 THE COURT: Okay.

16 MS. SEIMETZ: Hi, Judge. For the reasons that you
17 stated, this is an issue that's very important to the CTA.
18 Separate and apart from this lawsuit, a very serious allegation
19 has been made presumably concerning another employee at the
05:36:12 20 CTA, and we now have, with the receipt of that information, an
21 affirmative duty to investigate it and determine its veracity.
22 You know that the CTA cannot sit back and do nothing when an
23 allegation like this is made.

24 So I am here in court this morning specifically to get
05:36:35 25 the information, to get it to my EEO officer because it deals

1 directly, as far as I can tell from what's been said, with
2 retaliation and punitive job action.

3 Now I don't really know based on the fact that I now
4 hear that it's secondhand if it is true, but it's enough to me
05:36:59 5 that it deserves an investigation.

6 Moreover, I will tell you just on the topic of
7 reimbursing witnesses, if a witness is called in a CTA case to
8 testify, the person's boss or a co-worker, they don't get to
9 decide if that person gets paid. The law department handles
05:37:23 10 all of that. Everyone is paid. We do the vouchers for it. So
11 if anyone is saying that, they don't even have the authority to
12 say it, which is another reason.

13 THE COURT: Right.

14 MS. SEIMETZ: I can't have this happening in other
05:37:40 15 cases if this is happening. So this is critically important to
16 the CTA and to me as its general counsel to protect my client
17 and make sure that this gets investigated and dealt with if
18 it's true.

19 MR. KENNEDY: And if it's not true, Judge, then we
05:40:12 20 would seek appropriate sanctions.

21 THE COURT: I know. Okay.

22 MR. SWEENEY: So if it is true, if it is true, then I
23 would assume that we're going to have the same sort of
24 repercussions for the CTA.

05:40:31 25 THE COURT: Right.

1 MR. SWEENEY: Right?

2 THE COURT: Right.

3 MR. SWEENEY: The CTA is going to be facing witnesses
4 at trial that it will have to confront that say: My testimony
05:40:43 5 was threatened by one of my [REDACTED] --

6 THE COURT: Right.

7 MR. SWEENEY: -- when I came here today.

8 THE COURT: Right.

9 MR. SWEENEY: So if they want to make this an issue --

05:40:52 10 THE COURT: Okay. Okay.

11 MR. SWEENEY: But the other thing I would say, this
12 shouldn't be under seal. I don't believe this should be under
13 seal.

14 THE COURT: I'm not sure about the under seal part,
05:41:16 15 either. I'm holding that in abeyance. Okay. So we're going
16 to embark now on a hearing on an investigation. Okay? I know
17 this is very important to your entity and your job, which is a
18 bigger job than this case, much bigger, but as for this case,
19 this is a single-plaintiff case who lost -- a person who lost a
05:41:57 20 job after a long time. I know that we have those cases in this
21 court all the time. This is going to start being the dog that
22 is overtaking the tail that is wagging. Okay? The case is now
23 the tail, and this investigation is going to start being the
24 dog. Okay?

05:42:19 25 MR. SWEENEY: We agree. That's why we said --

1 THE COURT: That is not, if I can be so bold,
2 necessarily in your client's best interest. Okay? I don't
3 know the value of this case from the plaintiff's perspective.
4 I know there are no fees because this is not a fee-shifting
05:42:44 5 case as far as I know, state law claims.

6 So I'm wondering about the wisdom of this, about what
7 we're about to embark on. I mean, what are we saying? We're
8 just going to call these people in, and they're going to
9 testify cold. We're not going to do any deps. We're just
05:43:18 10 going to call them in, and I'm going to decide their
11 credibility. I mean, I'm happy to do that. If that's what
12 we're going to do, let's have them in next Friday. Let's do
13 it.

14 Who are they? I mean, you can't prep them even though
05:43:37 15 they're your employees. I mean, I don't know if I can do it
16 next Friday, you know, but I can do it.

17 MR. KENNEDY: If I may on that point, Your Honor --

18 THE COURT: I can't do it next Friday.

19 MR. KENNEDY: That's fine, but I also do want to make
05:43:51 20 another point. I understand what you're saying, and we welcome
21 the hearing.

22 THE COURT: But this is getting ugly.

23 MR. KENNEDY: Well, it's more than --

24 THE COURT: You know, I know not to have the hearing
05:44:03 25 does a disservice to you in terms of what else you need to

1 accomplish in terms of other cases and people getting paid to
2 be witnesses. I know you've got lots of litigation going on,
3 not just employment cases but, you know, PI cases and stuff
4 like that.

05:44:33

5 I want to be sure plaintiff, plaintiff not you, that
6 plaintiff is very sober about this decision, because if these
7 employees don't back this up this is a very dangerous road to
8 go down, a very dangerous road. So I'm happy to set a hearing,
9 but we've got to put these people's names on the record and the
10 CTA has to bring them in, give them the day off, pay them.

05:45:11

11 MS. BABBITT: We will.

12 THE COURT: And the [REDACTED] has to come in, too, or
13 whoever the threat-maker is, to come in and testify. I would
14 suspect the plaintiff is going to have to come in because he
15 relayed the information, and I suspect we're going to get
16 involved in some attorney-client finagling. So it's a real
17 kettle of fish or a can of worms.

05:45:37

18 MR. SWEENEY: And if it's proven true?

19 THE COURT: Well, you know, that will be the second
20 can of worms. I mean, I don't know what to say.

05:46:09

21 MR. SWEENEY: Very good.

22 THE COURT: If it's true, we're going to have a
23 problematic [REDACTED] on our hands at CTA who's probably going
24 to lose his or her job. I mean, that's one thing that's going
25 to happen. That's not my decision, lucky for me.

05:46:46

1 MR. SWEENEY: Well, I'm talking about in terms of this
2 case, in terms of the costs of the evidentiary hearing.

3 THE COURT: I suppose you're going to move for costs,
4 and I'm going to have to decide. I mean, that's down the road.
05:47:16 5 But it doesn't get us any closer to the merits of this case,
6 and frankly this claim is the least of your claims in terms of
7 damages. I mean the claim.

8 MR. SWEENEY: We agree.

9 THE COURT: This didn't mean he couldn't get a job.
05:47:40 10 So in terms of the tail and the dog, what are we doing with the
11 amount that's going to go into this? I mean, I'm supposed to
12 keep things proportional. I mean, with all due respect to the
13 seriousness of the allegation, this is not proportional. I
14 mean, I'm not going to lose sight of the seriousness of the
05:48:08 15 allegation, but I want to make sure this is -- I want to make
16 sure that the plaintiff is aware of what he's unleashing.

17 MR. SWEENEY: I think the plaintiff is telling the
18 truth, and we are --

19 THE COURT: Well, that's your job.

05:48:37 20 MR. SWEENEY: Right. You know, we're going to have
21 issues, I think, ultimately when witnesses start walking in
22 front of a federal judge and have to start talking about under
23 oath whether or not their supervisor or boss or someone else
24 above them threatened them. I don't know what they're going to
05:49:08 25 say, but we are not the ones that -- we brought it to someone's

1 attention. We did not bring a motion based on it. But if
2 that's what they want to do, then we'll stand behind what was
3 said.

05:49:39

4 THE COURT: Okay. So we'll put the names of the
5 witnesses on the record. There's going to be two witnesses,
6 and I assume we'll want to depose -- I mean, we'll want to talk
7 to the plaintiff as well.

8 MR. KENNEDY: Yes.

05:49:52

9 THE COURT: Okay. So the plaintiff, that will be
10 limited to his reporting on this issue, of course. We're not
11 going to talk to him about the claims and all of that. The
12 name of the person who was threatened and the name of the
13 person who issued the threat, that's all we know, right?
14 There's not other people that we're concerned with.

05:50:11

15 MR. SWEENEY: I'm not aware of them.

16 THE COURT: Okay. I mean, I don't want to do this
17 hearing twice, so you need to check with your client and make
18 sure there's not other people.

19 MR. SWEENEY: I mean, he's not working there anymore.

05:50:37

20 THE COURT: Right.

21 MR. SWEENEY: So he's not privy to what might be being
22 said throughout CTA, you know.

05:50:54

23 THE COURT: Sure. But I'm sure the witness who was
24 threatened will be asked on the stand: Are you aware of any
25 other people? Have you talked to other people?

1 You know, but I don't want to hear from your client
2 after the fact: Oh, I talked to Joe on the phone, and he had
3 the same experience.

4 So I do want you to check with your client beforehand.

05:51:22

5 MR. KENNEDY: If I may, Judge, in their February 6th
6 e-mail, they say that the CTA is threatening potential
7 witnesses, plural. So if it's only one now that they're
8 putting at issue, that's different from what they initially
9 accused us of.

05:51:49

10 MR. SWEENEY: This witness is concerned about his
11 identity. It wasn't until today that I revealed that he was
12 male because I think they already know who it is. But, you
13 know --

05:52:12

14 MR. KENNEDY: Judge, I've interviewed the witnesses
15 that we've presented for deposition. If he's talking about one
16 of my clients that tampered, I need to know that. If he's
17 trying to drive a wedge between me and my client, I want to
18 know that, too. But I want to know the name, and I think we're
19 entitled to know the name.

05:52:44

20 THE COURT: Yes, I don't know a way around identifying
21 the person. I understand they're feeling scared. I don't
22 know. I mean, we have to. We're going to have a -- I mean, if
23 you want to take a break and come back next week and tell me if
24 you want to withdraw these allegations, but we've got to know.

05:53:09

25 I've got to know the name of the witnesses, and I've got to

1 know the name of the person who issued or insinuated or however
2 direct it was. It sounds like it was pretty direct. But, you
3 know, what was said, I've got to know the name of the person
4 who said that.

05:53:28

5 Now, you know, I can only advise CTA, obviously, I
6 don't want anything negative to happen to these people, but I
7 trust that they know that.

05:53:57

8 MR. SWEENEY: I would suggest that we take a short
9 break, a week or whatever it might be. I will see what the
10 resolve, if I can determine it, of the witness is with respect
11 to how willing he is to stand behind what was said. If he's
12 not, then we won't have an issue. If he is, then I guess
13 counsel will have to decide whether they want to face that.

05:54:24

14 MR. KENNEDY: Judge, may I respond?

15 THE COURT: You may.

16 MR. KENNEDY: I object to that.

17 THE COURT: Yes.

05:54:34

18 MR. KENNEDY: Judge, we have no choice but to follow
19 the evidence wherever this goes. This is not a discretionary
20 item for general counsel for the CTA or for us in representing
21 these clients in this case. We'll follow that evidence
22 wherever it goes, period. I'm the one and CTA is the one who
23 brought this to the Court's attention, not counsel. CTA
24 brought it to Judge Dow, and CTA brought it before you.

05:54:57

25 This process that he's just articulated, think about

1 what he's saying. Cavelle is going to call my client, whoever
2 it is, and say: Hey, what about this tampering thing? Are you
3 sure you want to come to Chicago and testify under oath before
4 a magistrate judge as to this, that, or the other thing?

05:55:28

5 Then my client is going to talk to Cavelle, and then
6 Cavelle is going to talk to his lawyer. Then I'm going to find
7 out after my client and Cavelle have conferred as to what's
8 happening.

05:55:43

9 My recommendation, Judge, is they disclose the name
10 now and you issue a bench subpoena or order him to be present
11 in court at a time and date certain. We won't talk to him.
12 In-house counsel won't talk to him. Plaintiff's counsel won't
13 talk to him, and Cavelle doesn't talk to him. He comes in
14 clean and untainted, and he tells Your Honor what happened, if
15 anything. The last thing we want is Cavelle getting involved
16 and conditioning this witness by this backroom channeling.

05:56:06

17 MR. SWEENEY: I thought I was just following your
18 suggestion.

05:56:26

19 THE COURT: Yes, I understand that. Yes, I'm
20 concerned, and I don't want to put Mr. Cavelle in a compromised
21 position, either. I didn't mean for him to be involved in
22 checking with the witness or anything like that. That's not
23 going to help anybody.

05:56:56

24 So I am going to just -- we're just going to decide on
25 a date today. We'll assume these witnesses can be present.

1 I'd like to get this done. I'm out the last week of March. I
2 think it would be best if we could get it done before that.

3 MR. KENNEDY: The 18th, Your Honor?

4 THE COURT: I'm looking at that.

05:57:46

5 MR. KENNEDY: I'm going to lose my general counsel on
6 the 19th for about a week.

7 THE COURT: Okay.

8 MR. KENNEDY: I think it would be important for
9 general counsel to be present.

05:57:54

10 THE COURT: Yes. So why don't we do the 18th. I
11 could do -- well, why don't we say -- oh, heck. I guess I'll
12 just cancel that thing. Why don't we say 9:30.

13 MR. KENNEDY: Thank you, Judge.

14 MR. SWEENEY: On the 18th?

05:58:31

15 THE COURT: Yes. No counsel and plaintiff are to have
16 contact with the following two witnesses.

17 MS. SEIMETZ: Judge, what I would like to do, if I
18 have a name, somebody has to get this person over to court.

19 THE COURT: Yes.

05:58:49

20 MS. SEIMETZ: So with the Court's permission, I would
21 like to simply have my assistant call this person and, first of
22 all, make sure that person is not on vacation or on night shift
23 or something. I don't know who it is, but that they're
24 available so that we can make arrangements to get them there.

05:59:17

25 I won't tell them necessarily why. I'll just say: An issue

1 has come up on a lawsuit involving CTA, and the judge would
2 like to speak with you.

3 That's all I'm going to say.

4 THE COURT: Yes.

05:59:38

5 MS. SEIMETZ: Do you think that's appropriate?

6 THE COURT: Yes, and it will be two witnesses.

7 MS. SEIMETZ: Okay. I need to know both the names
8 then for availability.

9 THE COURT: Okay. So who are the two witnesses?

05:59:59

10 MS. SEIMETZ: So can I get that?

11 MR. SWEENEY: I will say the threatened witness is
12 George Mendenhall.

13 MS. SEIMETZ: Okay.

14 MR. SWEENEY: [REDACTED] I think I know [REDACTED] first
15 name, but I don't know his last name.

06:00:16

16 THE COURT: Oh, dear. What's the first name?

17 MS. BABBITT: I can look and see if I have it in an
18 e-mail --

19 THE COURT: Sure.

06:00:27

20 MS. BABBITT: -- if you want to take a short break.

21 THE COURT: Sure.

22 (Brief pause.)

23 MR. SWEENEY: Can I make a quick phone call?

24 THE COURT: Who are you calling?

06:02:27

25 MR. SWEENEY: The client knows the name. I don't know

1 the [REDACTED] name.

2 THE COURT: Yes, that's tricky. Would you know who
3 this person's [REDACTED] is?

06:02:52

4 MR. KENNEDY: I'd have to check, Judge, or counsel
5 would have to check.

6 MS. SEIMETZ: I don't even remember what department
7 Mr. Mendenhall is in. Do you know? Does anyone remember that?

8 THE COURT: But we don't know if it's [REDACTED]
9 [REDACTED] do we?

06:03:34

10 MS. SEIMETZ: And I also don't know -- I mean,
11 obviously, [REDACTED] so
12 I don't know if he's talking about a [REDACTED] or
13 somebody that's --

14 THE COURT: Right.

06:04:15

15 MS. SEIMETZ: -- you know, [REDACTED]
16 It's very hard to know.

17 THE COURT: Right. Well, I don't want to do this
18 hearing without [REDACTED]

19 MR. SWEENEY: Nor do we.

06:04:37

20 THE COURT: Do we know [REDACTED] first name? [REDACTED]?

21 MR. SWEENEY: No, I think it's [REDACTED] or [REDACTED]. I can't --
22 this is just my memory.

23 THE COURT: Yes.

24 MR. SWEENEY: I could find out pretty fast.

06:05:02

25 THE COURT: Can you send your client a text and just

1 ask what is the witness -- you know, who threatened the
2 witness, and just not get into a big conversation with him?

3 MR. SWEENEY: Sure.

4 THE COURT: And the plaintiff will need to be here
5 that day as well.

06:05:21

6 MR. SWEENEY: He's in Florida. Could he participate
7 by phone?

8 THE COURT: No, but it's a Monday if that helps.

9 I'm going to take a short break, and I'll be back to
10 try to sort out who this other person is.

06:05:46

11 MR. KENNEDY: Thank you, Judge.

12 MS. BABBITT: Thank you.

13 MR. SWEENEY: Thank you, Your Honor.

14 (Recess.)

06:06:02

15 THE COURT: We're back on the record.

16 MR. SWEENEY: The other witness is [REDACTED].

17 THE COURT: Oh, good.

18 MR. SWEENEY: I don't know how that's spelled.

19 THE COURT: All right. So we will meet at 9:30 on

06:06:19

20 March 18th. The witnesses will be here. No lawyer will have
21 contact with them. The plaintiff will be here. I have a 1:00
22 o'clock, so that's our timeline. Okay?

23 MR. KENNEDY: And Mr. Cavelle will have no contact
24 with Mendenhall or [REDACTED].

06:06:39

25 THE COURT: Plaintiff will not have any contact with

1 the other witnesses, plaintiff's counsel, defense counsel, and
2 general counsel, general counsel or your staff.

3 MS. SEIMETZ: Right. I'm just going to only make the
4 arrangements to make sure that they're --

06:07:01

5 THE COURT: Yes, you're going to make sure they're
6 escorted and they know they have to be here.

7 MS. SEIMETZ: Yes.

8 THE COURT: And you can talk to your client, of
9 course. Now, what if they're not available?

06:07:30

10 MS. SEIMETZ: I'll have to find that out pretty
11 quickly when I get back to the office.

12 THE COURT: Yes.

13 MS. SEIMETZ: I'll advise counsel.

06:07:40

14 THE COURT: So I guess if the witness is unavailable
15 you'll file some kind of motion, and we'll pick a new date.

16 MS. SEIMETZ: Right.

17 THE COURT: You'll get on the phone with my staff, and
18 we'll pick a new date. Okay?

06:08:03

19 MS. SEIMETZ: Well, I would say, you know, unless
20 somebody is on a vacation somewhere, they won't be not
21 available because of work commitments --

22 THE COURT: Right.

23 MS. SEIMETZ: -- because this is more important.

24 THE COURT: Right.

06:08:17

25 MS. SEIMETZ: But if they're already scheduled to be

1 out of the office or they're out of the country or something,
2 there's not much I can do about that.

3 THE COURT: Right.

4 MR. SWEENEY: Same rule for plaintiff, I assume?

06:08:38

5 THE COURT: Yes, but let's hope he's available.

6 MR. SWEENEY: Yeah, sure.

7 THE COURT: All right. See you soon.

8 MR. KENNEDY: Thank you, Your Honor.

9 MR. SWEENEY: Thank you.

06:08:46

10 MS. BABBITT: Thank you.

11 (Proceedings concluded.)

12 C E R T I F I C A T E

13 I, Patrick J. Mullen, do hereby certify that the
14 foregoing is an accurate transcript produced from an audio
15 recording of the proceedings had in the above-entitled case
before the Honorable MARY R. ROWLAND, one of the magistrate
judges of said court, at Chicago, Illinois, on March 7, 2019.

16 /s/ Patrick J. Mullen
17 Official Court Reporter
18 United States District Court
Northern District of Illinois
Eastern Division

19

20

21

22

23

24

25